**STATE OF MAINE**
**SUPREME JUDICIAL COURT**
**SITTING AS THE LAW COURT**

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LAW COURT DOCKET NO. OXF-23-366

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DELANNA GAREY
Appellant

v.

STANFORD MANAGEMENT, LLC, *ET AL.*
Appellees

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APPEAL FROM THE SUPERIOR COURT (OXFORD)

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# BRIEF OF APPELLANT

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## TABLE OF CONTENTS

Page

## TABLE OF AUTHORITIES

STATE CONSTITUTION



STATUTES



STATE CASES

COURT RULES

## I. INTRODUCTION

This is an appeal from an order granting a Rule 12(b)(6) motion to dismiss a complaint for defamation, false light invasion of privacy, a declaratory judgment, and injunctive relief.

## II. FACTS & PROCEDURAL HISTORY

Appellant Delanna Garey (hereinafter "Garey") filed this suit against her former employer, Stanford Management, LLC (hereinafter "Stanford") and its employee, Eve Dunham (hereinafter "Dunham") for defamation and false light invasion of privacy.[1] (A. 17-23.) Garey also sought a declaratory judgment and injunctive relief concerning her right to visit residents of a large multiunit residential building owned by Stanford notwithstanding a criminal trespass notice served on her by Stanford. (A. 24-25.) Stanford and Dunham filed a motion to dismiss pursuant to M.R. Civ. P. 12(b)(6). (A. 31.) The Superior Court (Oxford – *Archer, J.*) dismissed Garey's complaint in its entirety for failure to state a claim. (A. 5-16.) This appeal follows.

The allegations set forth in the Complaint, which this Court accepts as true and construes liberally in Garey's favor, follow.

[1] Garey also brought a count alleging the tort of reckless or intentional infliction of emotional distress. Garey does not challenge the order of the court below dismissing that claim.

Stanford is the owner of an 80-unit residential rental property located in Rumford known locally as the "Muskie Building." (A. 18.) Dunham was Stanford's "Director of Operations." (A. 18.) Garey worked for fifteen years as the manager of the Muskie Building. (A.18.) In January 2023, Garey was terminated for allegedly poor work performance. (A. 18.) Stanford's reasons for terminating Garey's employment had nothing to do with dangerous or threatening behavior. (A. 19.)

On February 6, 2023, Stanford and Dunham requested that the Rumford Police Department serve a criminal trespass notice on Garey forbidding her from entering the Muskie Building.[2] (A. 19 27.) Dunham and Stanford posted copies of the criminal trespass notice on the front and back public-facing doors to the Muskie Building. (A. 19, 28.)

On March 8, 2023, Dunham, acting on Stanford's behalf, delivered a letter to every resident of the Muskie Building and posted a copy of the letter in the elevator. (A. 19, 29.) The letter was about Garey and a reasonable reader of the letter would infer that it was referring to Garey. (A. 19.)

[2] "A person is guilty of criminal trespass if, knowing that that person is not licensed or privileged to do so, that person . . . [e]nters any place in defiance of a lawful order not to enter that was personally communicated to that person by the owner or another authorized person. Violation of this paragraph is a Class E crime." 17-A M.R.S. § 402(1)(E).

The letter asserted that "as a result of the behavior of former employees, Stanford Management has had to take legal and procedural steps to protect our current employees, tenants, and community as a whole." (A. 19, 29.) The letter threatened residents with eviction if they had former Stanford employees visit them at their apartment. (A. 29.)

A reasonable reader of the March 8 letter would reasonably infer Dunham and Stanford to be asserting that Garey had engaged in behavior that was so dangerous or threatening as to force Stanford to take legal action to protect not only its employee from Garey but also to protect the tenants and the "community as a whole" from Garey. (A. 19-20, 29.) At least one reader of the March 8, 2023 letter did take it that way. (A. 20.) Stanford and Dunham's assertion that Garey had engaged in such behavior was false. (A. 20.)

On about March 10, 2023, Garey's aunt sent Dunham an email asking, among other things, whether the criminal trespass notice had been served on Garey "due to personal reasons or for truly professional reasons." (A. 20, 30.) Dunham responded, falsely, "That determination and action was made by the Rumford Police department," thereby creating the false impression that law enforcement had made an independent

determination that it was necessary and appropriate to serve a criminal trespass notice on Garey. (A. 20, 30.)

Stanford and Dunham knew that their statements were false and acted with ill will towards Garey. (A. 22, 23, 24.)

As a result of Stanford and Dunham's above-described conduct, Garey suffered mental and emotional distress along with presumed and actual injury to her reputation. (A. 20.)

Garey has multiple relatives and even more friends and acquaintances who reside at the Muskie Building. (A. 21.) At least one of Garey's relatives wanted to invite Garey to visit her at the Muskie Building but was unable to do so because of Stanford's actions including serving a criminal trespass notice on Garey. (A. 21.) Garey anticipates that residents of the Muskie Building will continue to invite her to visit them at their apartments and that she will want to accept those invitations. (A. 21.)

In dismissing Garey's defamation claim, the court below held that Garey could not prove that Dunham's email to Garey's aunt was false. (A. 8.) The court below further held that the statements contained in the letter sent to building residents and posted in the elevator "should . . . be considered a statement of opinion." (A. 9.) While the court acknowledged that the statement "could imply an undisclosed factual basis" it went on to

hold, “it is not clear that those facts are necessarily defamatory” and concluded that the statement was “too vague to support Plaintiff’s interpretation” (*i.e.*, that Garey had, according to Stanford, engaged in conduct necessitating her being excluded from the building for the protection of Stanford’s employees, tenants, and the community.) (A. 9.)

The court further held as the Garey’s defamation claim that the Complaint, on its face, gave “rise to a conditional privilege.” (A. 10.) The court also held that Garey did not provide sufficient “facts from which the Court can infer negligence.” (A. 11.) Finally, as to the defamation claim, the court held that Garey could not establish defamation *per se* because “the statements . . . are not capable of being proved false” and that she had not sufficiently pled specific harm. (A. 11.)

As to Garey’s false light invasion of privacy claim, the court held, “Plaintiff’s allegations could not, as a matter of law, be viewed as highly offensive to a reasonable person.” (A. 12.) The court further held that Garey’s false light claim was defeated by the same conditional privilege as was her defamation claim. (A. 12.)

Finally, in denying Garey’s request for declaratory and injunctive relief regarding her ability to enter the Muskie Building to visit residents, the court acknowledged contrary authority on the substantive issue – *i.e.*,

whether a landlord of a multiunit building can prevent tenants from having a particular person as a visitor by preventing that person from entering common areas of the building. (A. 14-15.) However, the court held that Garey has no standing to seek declaratory or injunctive relief (1) because she is not a tenant and (2) because she "has not been arrested for criminal trespass . . . ."

## III. ISSUES PRESENTED

The issue presented is whether the court below erred in granting Appellee's motion to dismiss.

## IV. ARGUMENT

This Court reviews *de novo* the legal sufficiency of a complaint when it has been challenged by a motion to dismiss, *McCormick v. Crane*, 2012 ME 20, ¶ 5, 37 A.3d 295, and "view[s] the facts alleged in the complaint as if they were admitted." *Ramsey v. Baxter Title Co*., 2012 ME 113, ¶ 2, 54 A.3d 710. Complaints are construed liberally and a "dismissal should only occur when it appears beyond doubt that a plaintiff is entitled to no relief under any set of facts that she might prove in support of her claim." *Oakes v. Town of Richmond*, 2023 ME 65, ¶ 15, 303 A.3d 650 (quotation marks and citation omitted).

A court's dismissal of a civil case upon a motion to dismiss has constitutional implications. The Constitution of the State of Maine, Article I, Section 19, provides, "Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law . . . ." Furthermore, our state Constitution provides, "In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced." Me. Const. art., § 20. When a court dismisses a civil suit on a motion to dismiss it risks prematurely terminating the plaintiff's right to redress and to have important factual issues decided by a civil jury in the course of seeking that redress.

"Maine is a notice pleading state." *Howe v. MMG Insurance Company*, 2014 ME 78, ¶ 9, 95 A.3d 79 (citation omitted). This Court has noted "that the 'notice pleading standard . . . [is] forgiving,' meaning that a complaint need only 'give fair notice of the cause of action by providing a short and plain statement of the claim showing that the pleader is entitled to relief,' and then make a demand for that relief." *Id.*, citing *Burns v. Architectural Doors & Windows*, 2011 ME 61, ¶¶ 16, 21, 19 A.3d 823; M.R. Civ. P. 8(a). "The 'complaint need not identify the particular legal theories that will be relied upon, but it must describe the essence of the claim and

allege facts sufficient to demonstrate that the complaining party has been injured in a way that entitles him or her to relief." *Id.*, citing *Burns*, 2011 ME 61, ¶ 17, 19 A.3d 823.

For instance, "a general allegation of negligence at a stated time and place will suffice in a motor vehicle tort case." M.R. Civ. P. 8, reporter's note. Rule 8 is to "be read with awareness that if the defendant needs more information than the complaint discloses, the discovery devices are designed for this purpose. *Id.*

In the context of defamation suits, this Court has noted that the continuing validity of the requirement that plaintiffs prove defamatory words strictly as alleged "is suspect in light of modern notice pleading and increased reliance on discovery." *Marston v. Newavom*, 629 A.2d 587, 591 (Me. 1993).

While the court below recited the correct standard for reviewing a motion to dismiss, it erred in holding Garey's complaint to a higher, incorrect standard. For instance, the court held that Garey's complaint, *on its face*, established that Stanford and Dunham's statements were conditionally privileged even though the complaint contended that they knew their statements to be false.

Privilege is an affirmative defense. *Boulet v. Beals*, 158 Me. 53, 56-58 (1962). "When a motion to dismiss is based on an affirmative defense, the movant has the burden of proving the affirmative defense." *Estate of Kay v. Estate of Wiggins*, 2016 ME 108, ¶ 11 (citation omitted). The Complaint did not establish on its face, beyond doubt, that the elements of conditional privilege exist. Moreover, "[e]ven if a conditional privilege exists . . . , it may be lost through abuse. The privilege does not protect against liability for false statements made with knowledge of their falsity or in reckless disregard for their truth or falsity." *Haworth v. Feigon*, 623 A.2d 150, 157 (Me. 1993) (citations omitted).

In this case, Stanford and Dunham made two of their statements, the March 8 letter and the posting of the "CRIMINAL TRESPASS NOTICE" not just to a select few recipients – but to the public at large. The letter was posted in the elevators in the building that are open to anyone visiting the building for personal or professional reasons. The "CRIMINAL TRESPASS NOTICE" was posted on the public facing exterior doors of the building. Neither the appellees nor the court below have not articulated how their false statement to Lynn LePage-Fitzpatrick that police decided to serve Ms. Garey with the "CRIMINAL TRESPASS NOTICE" was privileged.

Furthermore, Ms. Garey has alleged sufficient intent on the part of Stanford and Dunham to overcome privilege. That alone is sufficient to overcome a motion to dismiss based on the defense of privilege.

The court below also erred in dismissing Garey's tort claims on the basis that Stanford and Dunham's statements were "opinion." Where a statement is made "ostensibly in the form of an opinion [it] is actionable if it implies the allegation of undisclosed defamatory facts as the basis of the opinion." *True v. Ladner*, 513 A.2d 257, 262 (Me. 1986) (citation omitted). The court agreed with Garey that the statement in the March 8, 2023 letter "could imply an undisclosed factual basis" but concluded "it is not clear that those facts *are necessarily* defamatory."

Whether a statement is "*capable* of a defamatory meaning is a question for the court . . . ." *Haworth v. Feigon*, 623 A.2d 150, 156 (1993) (emphasis added) (citation omitted). When a statement is *capable* of a defamatory meaning, then it is up to the jury to decide whether the statement did in fact carry that meaning to the listener or reader. *Id.* (citation omitted). The court below correctly determined that the statement in the March 8 letter *were capable* of a defamatory meaning, but erred in dismissing Garey's claims because the statement did not "necessarily" carry that meaning – at the motion to dismiss stage.

The court also erred in determining that Garey "cannot prove" the falsity of Dunham's March 10 statement to Garey's aunt. The clear implication of Dunham's statement was that the police had decided to serve Garey with the criminal trespass notice forbidding her from entering the Muskie Building. This was false, and Garey asserted as much in her Complaint. Stanford and Dunham *asked* the police to serve Garey but Dunham's statement to Garey's aunt creates the false impression that public officials charged with law enforcement and public safety made an independent determination that the residents of the Muskie Building needed to be protected from Garey.

The court below dismissed Garey's false light invasion of privacy claim for similar reasons and erred in doing so for similar reasons. Construed in the light most favorable to Garey, it is not beyond doubt that Stanford and Dunham's actions would not be "highly offensive to a reasonable person." They falsely portrayed Garey as a dangerous person against whom the residents of the Muskie Building, and the community, needed to be protected – so much so that the police decided to ban her from the building.

Finally, the court below erred in dismissing Garey's requests for a declaratory judgment and injunctive relief for lack of standing. This Court's

standing requirement, unlike the Article III "case or controversy" requirement, "is prudential, rather than constitutional." *Collins v. State*, 2000 ME 85, ¶ 11, 750 A.2d 1257, 1261 (Calkins and Dana, JJ., concurring) (citation omitted). "The basic premise underlying the doctrine of standing is to limit access to the courts to those best suited to assert a particular claim. There is no set formula for determining standing." *Roop v. City of Belfast*, 2007 ME 32, ¶ 7, 915 A.2d 966 (citations and quotation marks omitted).

For example, this Court has held that in challenges to planning board decisions, "a minor adverse consequence affecting the party's property, pecuniary or personal rights is all that is required for the abutting landowner to have standing." *Id.* The threat of harm from unlawful activity can be sufficient to confer standing. *Id.* at ¶ 8.

In this case, Stanford's actions in serving a criminal trespass notice on Garey and purporting to prohibit her from visiting residents of the Muskie building have *at least* a minor adverse impact on Garey's personal rights – her right to visit friends and family at their invitation. Garey is not a stranger to the controversy. The ban was directed *at her*. To the extent that Stanford may argue that the ban is justifiable – reasonable – and thus, lawful – Garey is in a better position than any resident to litigate that issue.

Conferring standing upon Garey would have the beneficial side effect of vindicating the rights of the residents – who may be incapable or not sufficiently incented to enforce their rights to be free from their corporate landlord arbitrarily deciding whom may visit them.

Finally, to deny Garey standing because she hasn't been arrested for violating the criminal trespass notice at best makes little sense and at worst would be a perverse outcome. When a citizen wants to and claims the right to do something that another person claims would be unlawful and in violation of their rights – indeed, would be a crime – that citizen should be *encouraged* to seek the courts' judgment on the matter *ex-ante*. They should not have the courthouse door shut in their face with a note posted to it that reads, "Come back *after* you have done it, been arrested, and charged with a crime."

## V. CONCLUSION

For the foregoing reasons, the Superior Court's order granting Appellees' motion to dismiss must be vacated, and this matter remanded for further proceedings.

Dated on this TWENTY-FIRST Day of DECEMBER, 2023.

Respectfully Submitted,
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## CERTIFICATE OF SERVICE

I, Christopher S. Berryment, Esq., Attorney for Appellant, hereby certify that I caused a true and correct printed copy of the above and foregoing instrument to be served upon the Appellees, by mailing a conformed copy via U.S. First Class mail (or Fedex overnight), postage thereon prepaid, addressed as follows, along with, where indicated, an electronic copy by email:

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DATED on this TWENTY-FIRST day of DECEMBER, 2023.

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